



October 12, 2017

Illinois Environmental Protection Agency
Bureau of Land
Attn: Imran Syed, Permit Section
1021 N. Grand Avenue E, Box 19276
Springfield, Illinois 62794-9276

RE: Log #2017-302; Application for Significant Modification to Permit – Bottom Ash Disposal from Midwest Generation, LLC Stations; Joliet/Lincoln Stone Quarry; Midwest Generation, LLC; Joliet, Illinois; Permit No. 1994-241-LFM; IEPA Site No. 1978090001; dated June 12, 2017.

COMMENTS AND REQUEST FOR HEARING

Dear Mr. Syed,

On behalf of Citizens Against Ruining the Environment (“CARE”), Earthjustice, Eco-Justice Collaborative, Environmental Law & Policy Center, Prairie Rivers Network, and Sierra Club (“Citizen Organizations”), please accept the following public comments on Midwest Generation’s (“Midwest Gen”) above-referenced Application for Significant Modification to Permit (“Application”). In light of the significant public concern about this matter, Citizen Organizations request that IEPA schedule a public hearing on the Application.

Midwest Gen seeks to transport toxic coal ash produced at its remaining operational coal-fired power plants and dump it into the already-contaminated Lincoln Stone Quarry (“Quarry” or “site”), located just south of the Des Plaines River in Joliet, Illinois. Doing so would add to the heavy pollution burden that local residents already bear and exacerbate the longstanding contamination problems at the site, in violation of Illinois Environmental Protection Act (the “Act”) and its implementing regulations. The Application should be denied.

I. The Lincoln Stone Quarry Should Never Have Been Approved For Disposal of Coal Ash.

The Lincoln Stone Quarry should never have been approved as a dumping site for coal ash. The Quarry, which is unlined, was dug deep into the earth, well under the water table – meaning that coal ash dumped into the Quarry is perpetually leaching toxic contaminants into the groundwater. Historic documents confirm this: in 1994, Commonwealth Edison (“Edison”)—the prior owner of the Quarry—informed the Illinois Pollution Control Board (“Board”) that the water level at the site was maintained “about 20-30 feet below the adjacent water table,” meaning that groundwater is perpetually flowing from that higher water table into the Quarry.¹ Compounding the problem, the subsurface at the site is a conduit for pollution: the Quarry is

¹ *In re: Petition of Commonwealth Edison Co. for an Adjusted Standard from 35 Ill. Adm. Code Parts 811 and 814*, PCB No. AS 96-9 (Aug. 15, 1996), at 2.

“located in fractured dolomitic rock.... [where] flow rates within individual fractures and bedding planes can be very rapid.”² In 1994, when Edison first sought approval from the Board to continue dumping coal ash at the Quarry (which it had been doing, without a permit, since the early 1960s), testing revealed that groundwater at the Quarry was already contaminated with toxic pollutants associated with coal ash, including, among others, arsenic, boron, cadmium, chloride, manganese, molybdenum, selenium and sulfate.³

Recognizing that the Quarry could not meet the normally applicable requirements to limit contamination at landfills, Commonwealth Edison sought an “adjusted standard” based largely on the premise that “the only environmental receptor affected...is the [Des Plaines] River.”⁴ The contamination, Edison claimed, “does not impact any known or potential receptors,” and Edison stated it would control future use of groundwater. *Id.* The Illinois Pollution Control Board granted Edison’s petition for adjusted standard for the Quarry in part based on those assertions.⁵

Edison’s assertions, however, proved to be wrong. Coal ash has continued to pollute not only the Des Plaines River, but also groundwater at the Quarry, with onsite groundwater wells repeatedly showing concentrations of arsenic, boron, barium, sulfate, molybdenum, and other toxic contaminants at levels far above health-based standards.⁶ That contamination has spread offsite: in 2006, residential water wells to the east and southeast of the Quarry were found to contain elevated levels of coal ash pollutants.⁷ Midwest Gen’s consultants recognized then, and continue to acknowledge now, that contaminated groundwater is flowing not just north and west into the Des Plaines River but also southeast, toward an elementary school and businesses.⁸ Thus, contrary to Edison’s assertions, receptors of the toxic coal ash contamination from the Quarry are no longer – and perhaps never were – just the Des Plaines River. Because the assertions on which the Board based its approval of the Quarry’s “adjusted standards” have long been demonstrated to be wrong, IEPA cannot continue to rely on those standards (or permits that incorporate them) to keep residents’ water safe, and certainly should not allow Midwest Gen to dump hundreds of thousands of tons more toxic coal ash into the Quarry.

² *Id.* at 10 (citing Edison’s Petition at 73-75).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 14 (“Moreover, because Edison commits to controlling future use of the groundwater, it appears granting the requested adjusted standard will not result in environmental or health effects substantially more adverse than the effects considered by the Board in adopting the rule of general applicability.”)

⁶ See Environmental Integrity Project, Earthjustice and Sierra Club, “IN HARM’S WAY: Lack Of Federal Coal Ash Regulations Endangers Americans And Their Environment: Thirty-nine New Damage Cases of Contamination from Improperly Disposed Coal Combustion Waste” (Aug. 26, 2010) (Hereafter “In Harm’s Way”) [available at https://earthjustice.org/sites/default/files/files/report-in-harms-way.pdf](https://earthjustice.org/sites/default/files/files/report-in-harms-way.pdf), at pp. 41-47.

⁷ *Id.*

⁸ See *id.* and KPRG, “Midwest Generation Joliet/Lincoln Stone Quarry 2016-2017 Annual Groundwater Flow Evaluation” (July 10, 2017), attached hereto as Exhibit A, at pp. 6-7.

II. Midwest Generation's Proposal Would Exacerbate Toxic Pollution at the Quarry.

Midwest Gen and its predecessors have already dumped immense amounts of toxic coal ash into the Quarry: more than 4 million tons, according to Midwest Gen's Application.⁹ Those millions of tons of coal ash continue to take their toll on the site. Recent groundwater monitoring reports from the Quarry show that, at multiple wells – particularly wells located on the site's southeast side – dangerously high levels of arsenic, boron, sulfate and molybdenum continue to pollute groundwater. Arsenic concentrations as high as .19 mg/L—nearly 20 times USEPA's and Illinois EPA's health-based standard of .010 mg/L—were measured just months ago at the site.¹⁰ Molybdenum—a pollutant linked to gout (joint pain, fatigue), high blood pressure, liver disease, and potential adverse impacts on the reproductive system¹¹—was found in concentrations as high as 2.3 mg/L, nearly three times USEPA's health advisory, in late 2016. Boron, a recognized indicator of coal ash pollution, was found at concentrations up to 8 times higher than Illinois' Class I groundwater standards and nearly 6 times EPA's children's health advisory level of 3 mg/L. Sulfate, barium, fluoride, and other pollutants associated with coal ash were also found at elevated levels in the Quarry's monitoring wells in the last year.

Critically, the full extent of the groundwater pollution is not known. Midwest Gen placed monitoring wells mainly onsite at the Quarry, with only a few wells offsite and none in the residential areas where contamination problems have been found.¹² Moreover, what monitoring has been done has been incomplete. Several pollutants associated with coal ash – including highly carcinogenic hexavalent chromium¹³ – have not been tested for at the Quarry.

Even with all the dangerous contamination already tainting the Quarry's groundwater, Midwest Gen wants to dump much more coal ash there. The company proposes to dump between 90,000 and 190,000 cubic yards more coal ash in the Quarry each year – equaling, by the company's admission, an additional 135,000 to 285,000 tons of coal ash each year.¹⁴ This additional coal ash will exacerbate both air and water pollution at the site.

Increased fugitive dust, greenhouse gases, particulate matter and toxic pollutants in diesel fuel will all exacerbate air pollution at and near the site. Fugitive dust pollution will increase as Midwest Gen dumps vast quantities of coal ash into the Quarry. Midwest Gen states that will transport the coal ash from other coal plants by truck, and then dump the ash into the Quarry from the surface. Application at 3. No mention whatsoever is made as to whether the ash will be

⁹ Midwest Gen states in its Application that the Quarry already contains about 2,700,000 cubic yards of coal ash, and that coal ash weighs approximately 1.5 tons per cubic yard. $2,700,000 \times 1.5 = 4,050,000$.

¹⁰ KPRG, "Midwest Generation Joliet/Lincoln Stone Quarry, Annual Report: Year Ending December 31st, 2016" (Apr. 25, 2017), attached hereto as Exhibit B.

¹¹ Agency for Toxic Substances and Disease Registry, "Toxicological Profile for Molybdenum: Draft for Public Comment, April 2017," available at <https://www.atsdr.cdc.gov/toxprofiles/tp212.pdf>, at pp. 8-10.

¹² See "In Harm's Way," *supra* note 6.

¹³ See <http://earthjustice.org/sites/default/files/CoalAshChromeReport.pdf>.

¹⁴ See Application at pp. 3-4.

dry or wet when transported and dumped from those trucks, and what measures will be taken – if any – to minimize fugitive dust pollution during those operations.

Moreover, those trucks will be traveling hundreds of miles to haul the coal ash to and from the Quarry from the Waukegan, Powerton and Will County stations. The Waukegan coal plant is 80 to 90 miles from the Quarry by major road; 160 to 180 miles roundtrip. The Powerton plant is 130 to 140 miles from the Quarry; 260 to 280 miles roundtrip. Midwest Gen does not indicate in its Application how frequently coal ash hauling will take place, so neither Citizen Organizations nor IEPA can calculate the exact environmental toll those haul trips will take. But the fuel – likely diesel fuel – burned for each haul trip will add significant amounts of carbon pollution, particulate pollution, and other toxic pollution to the air at and near the Quarry, further harming nearby communities.¹⁵

Groundwater pollution at the site will likewise be worsened by the addition of hundreds of tons more coal ash dumped there each year. Groundwater monitoring from coal ash ponds at the Waukegan, Will County and Powerton coal plants – the plants from which Midwest Gen proposes to bring coal ash – shows that the coal ash produced at those coal plants is also chock full of toxic pollutants, including antimony, arsenic, boron, chloride, iron, manganese, nitrate, selenium, sulfate, and thallium.¹⁶ The pumping wells at the Quarry – the one mechanism slowing the flow of the contaminated groundwater from the site towards the elementary school and businesses to the southeast – are, without the addition of hundreds of thousands of tons more coal ash, already failing to reduce pollution to safe levels. Joliet residents should not be forced to take on even more contamination.

II. The Illinois Environmental Protection Act and Implementing Regulations Require IEPA to Deny the Application.

The Illinois Environmental Protection Act and implementing regulations do not allow Midwest Generation’s permit to be modified so that the company can dump hundreds of thousands of additional tons of toxic coal ash into the unlined Lincoln Stone Quarry. Under 35 Ill. Adm. Code § 813.204, “[a]pplications for significant modifications [to approved permits] shall be subject to all requirements...in Subpart A.” Subpart A of 35 Ill. Adm. Code 813, in turn, sets out standards for issuance of a permit and limitations thereto. Critically, a permit – or permit modification – may issue only if the applicant provides “proof that the facility... will not cause a violation of this Act or of Board regulations set forth in 35 Ill. Adm. Code: Chapter 1.” 35 Ill. Adm. Code § 813.104(a); 35 Ill. Adm. Code § 813.204. Midwest Generation cannot satisfy that standard because its Lincoln Stone Quarry is already causing a violation of the Act and the Application would make that violation worse.

¹⁵ Citizen Organizations recognize that some hauling may be necessary to transport coal ash to safer disposal in dry, properly-lined landfills, but a thorough analysis should be done to locate the closest proper disposal location to each coal plant, as well as to implement other measures to cut pollution from those haul trips, such as the use of electric vehicles or clean diesel.

¹⁶ See, e.g., groundwater monitoring reports for Waukegan, Will County and Powerton, attached as Exhibits A9-A13, B10-B12, C9-C11, and D16-D18 to the Memorandum of Law In Support of Complainants’ Partial Motion for Summary Judgment in IPCB 2013-015 (June 1, 2016), available at <http://www.ipcb.state.il.us/documents/dsweb/Get/Document-92815>

A. Midwest Generation has “cause[d] or threaten[ed] or allow[ed]” the discharge of contaminants into the environment at the Lincoln Stone Quarry.

The Application may not be approved because the Lincoln Stone Quarry is already causing a violation of Section 12(a) of the Act, which prohibits any person from “[c]aus[ing] or threaten[ing] or allow[ing] the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources....” 415 ILCS 5/12(a).

In determining whether a party has “cause[d] or threaten[ed] or allow[ed] the discharge of any contaminants” into a waters of the State, Illinois courts and the Illinois Pollution Control Board focus on two factors: first and primarily, whether the party has the “capability of control” over the water pollutants or the premises where the water pollution occurred, and second, whether the party has taken “extensive precautions” to prevent pollution from occurring. *See, e.g., Gonzalez v. Pollution Control Bd.*, 960 N.E.2d 772 (Ill. App. First Dist. 2011) (“Property owners are responsible for the pollution on their land unless the facts establish the owners either lacked the capability to control the source or had undertaken extensive precautions to prevent vandalism or other intervening causes”) (internal quotations omitted); *People v. A.J. Davinroy Contractors*, 249 Ill. App. 3d 788, 794 (1993) (defendant liable when it “neither lacked the capability to control the source of the pollution nor undertook any precautions to prevent the pollution”); *Perkinson v. Ill. Pollution Control Bd.*, 187 Ill. App. 3d 689, 694-95, 543 N.E.2d 901, 904 (1989) (Illinois has a “long line of precedent... which holds that the owner of the source of the pollution causes or allows the pollution... and is responsible for that pollution unless... the owner either lacked the capability to control the source... or had undertaken extensive precautions to prevent vandalism or other intervening causes”).

When a party owns the premises where pollution occurs, Illinois courts and the Board presume that party has control over those premises. *See, e.g., People v. Inverse Investments*, PCB 11-79, 2012 Ill. Env. Lexis 92, *25 (PCB Feb. 16, 2012) (denying motion to dismiss when complaint alleged that defendant owned site “that contained contamination that is migrating offsite and polluting groundwater”); *Meadowlark Farms, Inc. v. Ill. Pollution Control Bd.*, 17 Ill. App. 3d 851, 861; *Freeman Coal Mining Corp. v. Ill. Pollution Control Bd.*, 21 Ill. App. 3d 157, 163 (1974). Parties who operate the premises or the source of pollution likewise exercise control over those premises or pollution sources. *See A.J. Davinroy Contractors*, 249 Ill. App. 3d at 794; *People v. Michel Grain*, PCB No. 96-143, 2002 Ill. Env. Lexis 489 at *7- *9 (PCB Aug. 22, 2002); *see also Allaert Rendering, Inc. v. Ill. Pollution Control Bd.*, 91 Ill. App. 3d 153, 155-56 (Ill. App. Ct. Third Dist. 1980).

Illinois precedent holds that a party with control over the premises or source of pollution cannot avoid liability unless that party has taken “extensive precautions” to prevent the pollution. *See, e.g., Gonzalez*, 960 N.E.2d at 779; *Perkinson*, 187 Ill. App. 3d at 694-95. When a material that is likely to leach is present, and the party controlling the source of pollution fails to install liners to retain leachate or monitoring wells “built to track” contamination, the party has not taken sufficient precautions to avoid liability under § 12(a) of the Act. *Wasteland, Inc. v. Pollution Control Bd.*, 118 Ill. App. 3d 1041, 1049 (Ill. App. 3d 1983) (upholding the Illinois Pollution Control Board’s holding that § 12(a) of the Act was violated in light of “the presence

of unpermitted material, likely to create leachate problems, and the lack of natural or required safeguards against water pollution...”).

Here, Midwest Generation owns and operates the Lincoln Stone Quarry in Joliet, Illinois, and therefore controls the site. *See Inverse Investments*, PCB 11-79, 2012 Ill. Env. Lexis 92, *25; *Meadowlark Farms, Inc.*, 17 Ill. App. 3d at 861; *Freeman Coal Mining Corp.*, 21 Ill. App. 3d at 163; *A.J. Davinroy Contractors*, 249 Ill. App. 3d at 794. As owner and operator of the Quarry, it is and has been Midwest Gen’s obligation to take “extensive precautions” to protect against contamination from the toxic coal ash dumped at the site – contamination it has long known about. *See id* and above. Yet Midwest Gen has failed to fulfill that obligation.

As discussed above, significant coal ash contamination of groundwater has long been documented at the Quarry. Midwest Gen did install a pumping system in an attempt to alleviate that contamination in 2010 and 2012, but those wells have not reduced pollution to safe levels. Years after putting the pumping system into operation, Midwest Generation’s groundwater monitoring reports reveal that contaminants including arsenic, boron, sulfate and molybdenum – all constituents of coal ash – continue to exceed Illinois’ groundwater protection standards and federal health-based standards in groundwater monitoring wells on the southeast side of the Quarry. Yet, notwithstanding the monitoring results clearly revealing the inadequacy of the pumping system, Midwest Gen has taken no further actions to address the contamination: it has not installed a liner beneath the vast quantities of coal ash soaking in the groundwater at the site, nor has it excavated the toxic ash there.¹⁷ Midwest Generation also has failed to evaluate the full extent of contamination at the site. For example, even though hexavalent chromium – the highly carcinogenic contaminant at issue in the film *Erin Brockovich* – has long been known to leach from coal ash¹⁸, it is not among the pollutants monitored for at the site. In short, the precautions Midwest Gen has taken at the Lincoln Stone Quarry are far from “extensive” and have shown themselves to be wholly inadequate to stop the contamination at the site. As such, Midwest Gen is *already*, even without adding hundreds of thousands of tons more coal ash, “caus[ing], threaten[ing] or allow[ing] the discharge of ...contaminants into the environment” at the Lincoln Stone Quarry.

B. Contamination from the Lincoln Stone Quarry is Causing, and Threatening to Cause, Continued Water Pollution in Illinois.

The contamination leaching from the Lincoln Stone Quarry is causing, and threatening to cause, water pollution in Illinois. The Act defines “water pollution” as:

such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to... render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic,

¹⁷ *See, e.g.*, Midwest Gen’s Application, and CCR COMPLIANCE CCR FUGITIVE DUST CONTROL PLAN Midwest Generation, LLC Joliet #9 Generating Station and Lincoln Stone Quarry 1601 South Patterson Road Joliet, Illinois, at 3 (“Existing ash in the Main Quarry is predominantly submerged...”), *available at* http://3659839d00eefa48ab17-3929cea8f28e01ec3cb6bbf40cac69f0.r20.cf1.rackcdn.com/LSQ_LSQ1_OCI.pdf

¹⁸ *See* <http://earthjustice.org/sites/default/files/CoalAshChromeReport.pdf>.

commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

415 ILCS 5/3.545. “Waters,” in turn, is defined as “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.” 415 ILCS 5/3.550. Waters of the state includes water in wells. *Tri-County Landfill Co. v. Illinois Pollution Control Board*, 41 Ill. App. 3d 249, 253-54, 353 N.E.2d 316, 320-21 (1976); *People ex rel. Ryan v. Stonehedge, Inc.*, 288 Ill. App. 3d 318, 321-22, 680 N.E.2d 497, 500 (1997); *see also People v. John Chalmers*, PCB 96-111 7 (Jan. 6, 2000).

The Illinois Pollution Control Board has made clear that water pollution exists when contaminants are present in excess of the groundwater quality standards adopted by the Board. *See Int’l Union v. Caterpillar*, PCB No. 94-240, 1996 Ill. Env. Lexis 579, at *88-*89 (PCB Aug. 1, 1996); *Inverse Investments*, PCB 11-79, 2012 Ill. Env. Lexis 92, at *2, *25-*26; *see also People v. Hicks Oil & Hicks Gas, Inc.*, PCB No. 10-12, 2009 Ill. Env. Lexis 308, *1-*2 (Aug. 6, 2009).

The principle that groundwater contamination in excess of the Board’s Class I standards constitutes water pollution holds true even when those standards are not in effect, as is the case where, as at the site at issue here, a Groundwater Management Zone (“GMZ”) has been approved for a site for a given pollutant. *See* 35 Ill. Adm. Code §§ 620.250(e), 740.530 (d). As noted above, water pollution is present when a discharge of any contaminant into the groundwater “will or is likely to...render such waters harmful or detrimental or injurious to public health, safety or welfare...” 415 ILCS § 5/3.545. When the Board adopted the groundwater quality standards in 1991, it noted that the Class I: Potable Resource Groundwater quality standards were being set at levels “equal to the USEPA’s Maximum Concentration Levels,” which are health-based standards designed to be protective of human health, Safe Drinking Water Act § 1412(b)(4)(A)-(B), 42 USC § 300g-1(b)(4)(A)-(B), and were intended to fulfill “the principle that groundwaters that are naturally potable should be available for drinking water supply without treatment.” IPCB R89- 14(B), Nov. 7, 1991, Final Order at 18.

Regardless of whether the groundwater protection standards are in effect, contamination in excess of those standards leaves the affected groundwater “harmful or detrimental or injurious to public health, safety or welfare” under § 415 ILCS 5/3.545. When standards are set to prevent harm to health, as Illinois’ groundwater protection standards were, exceedances of those standards in a water body constitute water pollution even if the standards are not in effect. *See Central Illinois Public Service Co. v. Pollution Control Board*, 116 Ill. 2d 397, 409-10 (1987) (“CIPSCO”) (explaining that “any contamination which prevents the State’s water resources from being usable ... constitute[s] pollution”); *People v. Texaco Refining and Marketing, Inc.*, PCB No. 02-03, 2003 Ill. Env. Lexis 665 at *21-22 (PCB Nov. 6, 2003) (holding that “Section 12(a) of the Act provides no exemption from liability for parties that comply with another regulatory program.”); *Caterpillar*, PCB No. 94-240, 1996 Ill. Env. Lexis 579 at *88-*89 (finding that “exceedances of the Part 620 standards... constitutes degradation of one of the State’s water resources and indicates the presence of water pollution caused by respondent”); *see*

also *People v. CSX Transp., Inc.*, PCB No. 07-16, 2007 Ill. Env. Lexis 296, *44-*45 (PCB July 12, 2007).

Here, Midwest Generation's recent annual groundwater monitoring report for the Lincoln Stone Quarry confirms that coal ash contaminants, including arsenic, boron, sulfate, and molybdenum, are present in the groundwater at and near the Lincoln Stone Quarry at levels exceeding Illinois' Class I groundwater quality standards. In fact, those reports show arsenic concentrations nearly 20 times higher than the Class I groundwater quality standard, boron concentrations more than 8 times higher than the Class I groundwater quality standard, and molybdenum at nearly 3 times EPA's health advisory level. In two wells, arsenic and boron have exceeded groundwater quality standards every quarter. Thus, because Midwest Generation is causing, threatening or allowing toxic coal ash constituents to leach from the Lincoln Stone Quarry in concentrations exceeding Illinois' groundwater protection standards, the company is causing water pollution at the Quarry in violation of Section 12(a) of the Act.¹⁹

C. Midwest Generation's Permit May Not Be Amended to Allow More Illegal Pollution.

Midwest Generation's Application may not be approved because the permit, as amended, would not and could not ensure that the Lincoln Stone Quarry "will not cause a violation of this Act or of Board regulations set forth in 35 Ill. Adm. Code: Chapter 1." 35 Ill. Adm. Code § 813.104(a); 35 Ill. Adm. Code § 813.204. Dumping hundreds of thousands of additional tons of toxic coal ash into the unlined Lincoln Stone Quarry, as Midwest Gen requests, would worsen the high levels of toxic pollution already fouling the Des Plaines River and further burden Illinois residents living near the Quarry, in violation of the Act.

As discussed above, the pumping system at the Quarry is clearly strained by the coal ash already there; as the groundwater monitoring reports reveal, the system is not up to the task of keeping coal ash pollution within the already-too-high groundwater standards that were set for the Quarry, much less to keeping that pollution to levels safe for human health. Nowhere in the Application does Midwest Generation mention any new or improved protective measures to help the strained pumping system manage the pollution stemming from the hundreds of thousands of tons of toxic coal ash it proposes to add to the Quarry each year. And there is no reason to believe that the proposed mountain of additional coal ash won't contribute significant pollution to the Quarry. To the contrary, groundwater monitoring at the Waukegan, Will County and Powerton plants – from which Midwest Gen proposes to bring the new ash – has for years shown

¹⁹ Importantly, it is no defense that some of the leaching coal ash in the Quarry was placed there by Midwest Generations' predecessors. A party with control over the pollution or the premises where that pollution occurs may be liable for allowing water pollution in violation of § 12(a) even if that party did not place the contaminants at issue in the ground or water, because it allowed that pollution to continue. See *Inverse Investments*, PCB 11-79, 2012 Ill. Env. Lexis 92 at *25; *People v. Michel Grain*, PCB No. 96-143, 2002 Ill. Env. Lexis 489 at *7 (PCB Aug. 22, 2002); *Illinois v. State Oil Co.*, PCB 97-103, Order, April 4, 2002, at 12-16.

It is likewise no defense for Midwest Generation to claim that it did not "intend" to cause, threaten or allow the continued pollution leaching from the Lincoln Stone Quarry. A party's intent, or lack thereof, has no bearing on liability. *People v. Fiorini*, 143 Ill. 2d 318, 346, 574 N.E.2d 612, 623 (1991) ("[I]ntent is not an element to be proven for a violation under Illinois Environmental Protection Act.").

extensive coal ash pollution of groundwater at those sites.²⁰ Moreover, the dumping of hundreds of tons of ash from trucks into the Quarry is likely to create significant fugitive dust air pollution, yet Midwest Gen does not explain in its Application which, if any, measures it will take to abate that pollution. The Application must be denied.

IV. Conclusion

Midwest Gen's proposal to add hundreds of thousands of tons of toxic coal ash to the unlined, saturated Lincoln Stone Quarry will exacerbate the existing contamination of groundwater and air at and around the Quarry, resulting in continuing violations of the Act and continued threats to nearby residents and the environment. Therefore, pursuant to 35 Ill. Adm. Code §§ 813.104(a) and 813.204, Midwest Generation's Application must be denied.

Respectfully submitted,



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²⁰ See, e.g., groundwater monitoring reports for Waukegan, Will County and Powerton, attached as Exhibits A9-A13, B10-B12, C9-C11, and D16-D18 to the Memorandum of Law In Support of Complainants' Partial Motion for Summary Judgment in IPCB 2013-015 (June 1, 2016), available at <http://www.ipcb.state.il.us/documents/dsweb/Get/Document-92815>.